IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 26 of 2006

SHAMSHER SINGH
V/S
EXECUTIVE ENGINEER ANOOPGARG & ORS

Mr. NL JOSHI, for the appellant / petitioner

Date of Order : 11.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

The plaintiff has filed the second appeal against the judgments of the two learned courts below dismissing the plaintiff's suit seeking a direction to the respondent not to stop the irrigation facility.

The case of the plaintiff is that he is continuing in possession of the land. He apprehended the stoppage of water supply as the land was contended to be government land. However, this question has been litigated right upto the Board of Revenue who vide order dt. 7.9.1994 restored the water supply, therefore, the injunction has been prayed. The case of the defendant is that the plaintiff is in possession as a trespasser, and has only claimed the right of irrigation. The learned trial court dismissed the

suit finding that the land is reserved for Pong Dam Oustees, and the plaintiff has no right, title, or interest on the land as he has not even produced any sale deed, or even any agreement, therefore, the issue no. 1 was decided against the plaintiff. Then, deciding issue no. 6 it was held that the land is Government land, and on such land water supply cannot be provided to the plaintiff. It was also found that the plaintiff has not produced any document like water slip, and therefore, he cannot be granted water supply. Then, while deciding issue no. 2 it was found that the plaintiff has admitted that the land is reserved for Pong Dam Oustees, and he has purchased it by agreement to sale. In this view of the matter, this issue was also decided against the plaintiff. Then, deciding issue no. 3 it was found that there is no provision of law according to which water supply can be given to the person in possession of the Government Land. Interalia with these findings, the suit has been dismissed.

Before the learned lower Appellate Court it was contended that the plaintiff has purchased the land by agreement dt. 30.10.1982, and is in possession since then, and therefore, he is entitled to water supply. Learned lower Appellate Court has found that the plaintiff has failed to lead any evidence to be in possession for the last 10 years, or to be having any right, title, or interest in the land, and the mere fact that he claims to

be in possession by itself does not entitle the plaintiff to have the water supply. Having gone through the judgments, I do not find any error in the findings of the learned courts below about the plaintiff having failed to prove his right, title, or interest in the land.

On the face of this finding, the only question is as to whether the appellant who is found to be only in unauthorised occupation can be said to be entitled to have the water supply, and it would suffice to observe that the learned counsel for the appellant has not been able to show any legal authority under the provisions of Rajasthan Irrigation and Drainage Act, and the rules framed thereunder under which the plaintiff may be entitled to have the water supply.

Thus, the appeal does not involve any substantial question of law. The same is, therefore, dismissed.

(N P GUPTA),J.

/Sushil/